



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

August 22, 2006

**REGISTERED MAIL**  
**RB 252 974 039 US**

The Nature Conservancy  
1917 First Avenue  
Seattle, WA 98101

The Nature Conservancy  
ATTN: Mr. Eric Delvin  
120 East Union Avenue, Suite 215  
Olympia, WA 98501

RE: Water Quality Certification Order **3609** and Coastal Zone Management consistency determination for Corps Nationwide Permit 27, Stream and Wetland Restoration Projects, Reference No. 200600815 to construct two amphibian ponds and place fill in wetlands adjacent to the Black River, a tributary to the Chehalis River, near Littlerock, Thurston County, Washington.

Dear Mr. Delvin:

On June 7, 2006, The Nature Conservancy submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Shotwell's Landing Restoration project. The project is part of the USDA-Natural Resources Conservation Service Wetland Reserve Program Wetland Restoration and Enhancement project. This project will involve excavating two shallow ponds on one and a half acres for amphibian habitat enhancement. Up to 5,000 cubic yards of material may be graded as part of the work with excess material spread over the site but not within wetlands. The total site work area is approximately four acres. The Corps of Engineers issued a Nationwide Permit 27 on August 17, 2006. The Department of Ecology issued a Public Notice for the proposed project on August 9, 2006.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.



On August 15, 2006, The Nature Conservancy submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c) (3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the applicant's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the Federal Water Pollution Control Act.

If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Perry J. Lund", written over a horizontal line.

Perry J. Lund  
Unit Supervisor  
Southwest Regional Office  
Shorelands and Environmental Assistance Program

PJL:LO:dn

Enclosure

cc: Jim Green, U.S. Army Corps of Engineers  
Robert Smith, Thurston County Development Services  
Key McMurry, WDFW  
Monica Hoover, USDA-NRCS

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 3609</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. 200600815</b>
<b>CERTIFICATION TO</b>	)	Shotwell's Landing Restoration Project adjacent
<b>The Nature Conservancy</b>	)	to the Black River at 14531 Littlerock Road,
in accordance with 33 U.S.C. 1341	)	Littlerock, Thurston County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW	)	
90.48.260 and Chapter 173-201A WAC	)	
	)	
	)	

TO: The Nature Conservancy  
1917 First Avenue  
Seattle, WA 98101

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ATTN: Eric Delvin  
120 East Union Avenue, Suite 215  
Olympia, WA 98501

On June 7, 2006, The Nature Conservancy submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. During review of the project, Ecology determined that an individual Section 401 water quality certification would be required. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 9, 2006. The Corps issued a Nationwide Permit (NWP) #27, Stream and Wetland Restoration Activities, for the project on August 17, 2006.

The proposed project is a part of the USDA-Natural Resources Conservation Service Wetland Reserve Program Wetland Restoration and Enhancement project. The objective of this project is to improve amphibian habitat adjacent to the Black River by excavating two shallow ponds to a maximum depth of 24 inches to lengthen the hydroperiod of the site. Up to 5,000 cubic yards of material may be graded as part of the work with excess materials spread over the site. No new material will be placed within wetlands. The total site work area is approximately four acres.

The proposed project will take place adjacent to the Black River at 14531 Littlerock Road, Littlerock, Thurston County, Washington; NW Section 14, Township 16 North, Range 3 West, WRIA 23, in the Upper Chehalis Watershed.

#### **AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

#### **WATER QUALITY CERTIFICATION CONDITIONS:**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

#### **A. General Conditions:**

1. For purposes of this Order, the term "Applicant" shall mean The Nature Conservancy, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office Attn: Federal Permit Coordinator, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. 3609 and Corps No. 200600815.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 7, 2006. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.

5. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.
10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

#### **B. Water Quality:**

1. The Black River (WRIA 23) is a Class A water of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(2) and WAC 173-201A-040 shall apply to this project.
2. This Order does not authorize temporary exceedances of the turbidity standard beyond the limits established in WAC 173-201A-110 (3). Furthermore, nothing in this certification

shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

**C. Timing Requirements:**

1. This Order is valid until all compliance requirements in this document have been met.
2. In-water work is subject to the fishery closure window determined by Washington State Department of Fish and Wildlife's (WDFW) Hydraulic Project Approval (HPA) issued for this project.

**D. Notification Requirements:**

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Southwest Regional Office Federal Permit Coordinator in writing at least three (3) days prior to the start of construction at the project site.
2. The Applicant shall provide written notification to Ecology's Southwest Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of construction.

**NOTE:** These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

**E. Construction Conditions:**

1. The Applicant shall implement appropriate Best Management Practices to protect water quality as identified in the Stormwater Management Manual for Western Washington, February 2005 (Ecology Publication No. 05-10-30) prior to the start of construction.
2. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling and grading work and shall be maintained throughout construction.
3. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.
4. The Applicant shall establish a separate contained area for washing down equipment, which does not have any possibility of draining to surface waters and wetlands. No wash water containing sediments, oils, grease, or other hazardous materials resulting from wash

down of the work area, tools, and equipment including concrete delivery trucks or other equipment used for concrete work shall not be discharged into state waters.

5. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in a confined area in order to prevent containment to waters of the state. Fueling areas will be provided with adequate spill containment.
6. Appropriate BMP's shall be implemented to minimize track-out during construction.

**F. Emergency/Contingency Measures:**

1. The Applicant shall develop a spill prevention and containment plan for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
  - a. Cease operations that are causing the compliance problem.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
  - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
  - e. Immediately notify Ecology's Southwest Regional Spill Response Office at (360) 407-6300 and the Washington State Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Southwest Regional Spill Response Office at 360 407-6300.

### **G. Appeal Process:**

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43 21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board  
4224 - 6th Avenue SE, Rowe Six, Bldg. 2  
P.O. Box 40903  
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology  
Appeals Coordinator  
P.O. Box 47608  
Olympia, Washington 98504-7608.

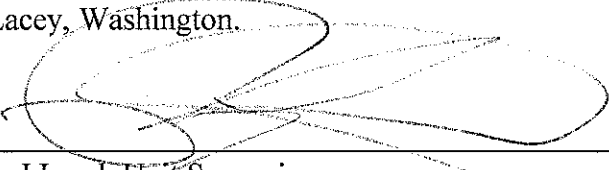
In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator  
Department of Ecology  
P.O. Box 47600  
Olympia, Washington 98504-7600

*For additional information Environmental Hearings Office Website <http://www.eho.wa.gov>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated 23 AUGUST 2006 at Lacey, Washington.



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Perry J Lund, Unit Supervisor  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington



## **Attachment # A**

**The Nature Conservancy**  
**Shotwell's Landing Restoration**  
Water Quality Certification Order # **3609**

Statement of Understanding  
Water Quality Certification Conditions

I, \_\_\_\_\_, state that, I will be involved as an agent or contractor for The Nature Conservancy in the construction of the Shotwell's Landing Restoration Project located within wetlands adjacent to the Black River at 14531 Littlerock Road, Littlerock, Thurston County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #3609 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Company

